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May 13, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

BY HAND

Mr. William F. Caton  
Acting Secretary  
Room 222  
1919 M Street  
Federal Communications Commission  
Washington, D.C. 20554

Re: Ex Parte Presentation in  
PP Docket No. 93-253

Dear Mr. Caton:

In accordance with the Commission's ex parte rules, 47 C.F.R. §§1.1206 and 1.1204, an original and one copy of this letter are being filed in PP Docket No. 93-253 as notification that yesterday George Murray and I met with Robert M. Pepper, Chief Office of Plans and Policy; William E. Kennard, General Counsel; Donald H. Gips, Telecommunications Policy Analyst; and Gregory L. Rosston, Telecommunications Policy Analyst.

We discussed the need for the Commission to award bidding credits to PCS broadband bidders which have significant ownership participation (e.g., 10% and higher) by minority and women-controlled entities ("Designated Entities"). We noted that it will be difficult for Designated Entities to meet the capital requirements to bid, build and operate a PCS system, particularly in major metropolitan markets, and that Designated Entities may have to form joint ventures with major companies to compete successfully for a broadband PCS license. Since a major company that contributes most of the capital is unlikely to relinquish control of the bidder to a Designated Entity, we suggested that bidders with meaningful participation by Designated Entities should receive bidding credits, with a sliding scale tied to the extent of their ownership. In response to the Staff's request to suggest objective

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tests to ensure meaningful participation by Designated Entities, we are suggesting that the Designated Entity be required to: a) contribute to the bidder its pro rata share of the total equity of the bidder; and b) be one of the general partners (if the bidder is a partnership) or have a specific number of seats on all governing bodies (i.e., board of directors and any management or executive committees) of the bidder, corresponding to the Designated Entity's share of the deal (if the bidder is a corporation). The issues we discussed yesterday and our response to the Staff's inquiry are set forth in greater detail in the attachment to this letter.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

  
Richard M. Firestone *ky Sup*

cc: Robert M. Pepper  
William E. Kennard  
Donald H. Gips  
Gregory L. Rosston  
Ralph A. Haller

Attachment to  
Ex Parte Letter  
May 13, 1994

STATEMENT OF GEORGE E. MURRAY  
ON AWARDING BIDDING CREDITS TO BROADBAND  
PCS BIDDERS THAT HAVE SIGNIFICANT AND MEANINGFUL  
PARTICIPATION BY MINORITIES OR WOMEN  
PP DOCKET NO. 93-253

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In recent actions in the auction and narrowband Personal Communications Services ("PCS") proceedings, the Commission has adopted a system of bidding credits for businesses controlled by women and members of minority groups ("Designated Entities") that will operate as a discount on the amount of the winning bid that will actually have to be paid to obtain a license. This is a useful and constructive approach to foster the objective of increasing the representation of Designated Entities in the communications industry.

The Commission has expressed the hope that according bidding credits to firms controlled by Designated Entities will encourage the formation of coalitions in which substantial communications companies "invest" in women-controlled or minority-controlled enterprises. However, even assuming bidding credits are available to minority and women-controlled businesses, there is a substantial risk that no Designated Entity could attract sufficient capital to bid on and win a major metropolitan market. Traditional sources of credit are likely to conclude that financing a PCS bid

by a minority or women-controlled entity is an unacceptably risky investment.<sup>1</sup> Further, it is not at all clear that the major players in the telecommunications industry would be interested in participating in a PCS joint venture where they do not have a controlling interest -- especially in the larger markets. It would not appear to be in the interest of major companies to be a non-controlling partner in one of the potentially vital components of their business. Thus, to ensure that minority and women-controlled businesses have a meaningful opportunity to fully participate in the bidding process and are not relegated to, at most, the smaller and less economically attractive markets,<sup>2</sup> I

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<sup>1</sup> PCS is a highly competitive, new service which is not likely to be an attractive borrower for traditional financial institutions. Minority and women-controlled businesses may have an additional handicap in that they may not have the experience or track record in developing other new communications services that could mitigate a bank's policy against lending to new and risky ventures. In addition, many minority and women-owned businesses do not have well-established and long-standing lending relationships on which they can rely. Thus, minority and women-controlled businesses will have to seek equity partners. It is my experience that equity partners which contribute the lion's share of the capital will not accept non-controlling interests.

<sup>2</sup> Inability to bid on larger markets may effectively preclude Designated Entities from bidding on other nearby markets, because of the efficiencies and greater value associated with a regionally owned and operated system. For example, there may be many markets where the most economically competitive system would be a regionally owned and operated system whose core is a major metropolitan market. If you are operating as a

[Footnote continued on next page]

strongly urge the Commission to also provide bidding credits to those businesses in which minorities or women (a) participate in a meaningful way in the management and operations of the bidder (as described more fully below) and (b) hold a significant (perhaps 10% and higher) interest in the bidder.

I am aware that there is precedent for awarding preferences only to minority or women-controlled businesses. However, the highly competitive nature of the PCS marketplace and the difficulty that Designated Entities will have in obtaining the necessary capital to build and operate a broadband PCS system demand a new approach if minorities and women are truly going to participate in the development of this new service. The Commission should not assume that a non-controlling interest is one devoid of meaningful participation. For example, it is my understanding that Mr. Wayne Schelle does not hold a controlling interest in American

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[Footnote continued from previous page]  
stand-alone system in a market where there is also a regional system, the stand-alone system may not be economically viable because of the regional system's competitive advantage in terms of marketing to customers and operating efficiencies. In addition, a smaller market may be much more valuable as part of a regional system than as a stand-alone system. Thus, companies with the financial ability to build and operate regional systems may outbid Designated Entities for the smaller markets that comprise the region.

Personal Communications. Yet, Mr. Schelle is one of the most prominent individuals in the PCS business. The point is that there can be meaningful noncontrolling participation in a communications venture.

I am also aware that the Commission is particularly concerned that clear and objective standards govern the participation of women and minority-controlled entities in non-controlled bidders to ensure such participation is "real" and meaningful. I suggest that the Commission adopt two standards to meet that goal. First, the Commission should require that, for the bidder to qualify for bidding credits, the Designated Entity must contribute its proportionate share of the total equity capital of the bidder, equivalent to the Designated Entity's percentage ownership in the bidder. Second, at a minimum, the Designated Entity must either: a) be one of the general partners, if the bidder is a general or limited partnership, or b) if the bidder is a corporation, have the right to designate a particular number of seats on the board of directors (and any other governing bodies of the corporation, such as any management or executive committees) which corresponds to the Designated Entity's

ownership interest in the bidder.<sup>3</sup> The two standards listed above will prevent sham transactions and "carried" interests. They will also ensure that the Designated Entity plays a key role in overseeing the management of the bidder. I firmly believe that when a participant or organizer actually contributes its proportionate share of equity, that participant will take an active management role to protect and enhance its investment.

The Commission could adopt a sliding scale of bidding credits. Thus, if the minority and women-controlled interest in a company were 10%, there could be a 15% bidding credit available to that company. The prospect for even greater Designated Entity participation would improve if the bidding credit increased disproportionately as the equity participation increased. For example, if increasing the minority participation to 15% resulted in a bidding credit of 20% to 25%, there would be a powerful incentive to create larger, rather than smaller, Designated Entity participation.

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<sup>3</sup> Thus, if the Designated Entity owned a 20% interest in the bidder and the bidder had a ten person board, the Designated Entity should be entitled to two seats on the board.

The approach described above would provide an alternative mechanism for promoting Designated Entities' participation in the bidding process in the event capital or other financial requirements prove to be an insurmountable barrier to stand-alone entry, particularly in larger markets. Indeed, I believe that that approach is the only effective way to broaden the diversity of companies that will be major players in the telecommunications industry for the future.

\* \* \*

In summary, I continue to believe that the Commission has a real opportunity to create a PCS licensing scheme that will foster the meaningful participation of Designated Entities in this exciting phase of the development of the wireless telecommunications industry. Hopefully, the foregoing comments will assist in making these opportunities a reality.